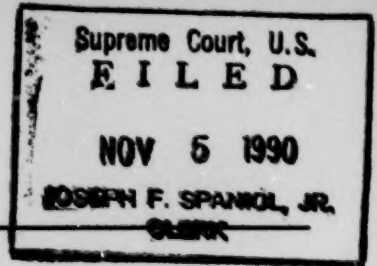


90-882



No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

RUDOLPH P. KUROWSKI

Petitioner

v.

CITY OF BRIDGEPORT

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Rudolph P. Kurowski
73D River Bend Rd.
Stratford, Connecticut 06497
(203) 378-6491

*Pro-Se



QUESTION PRESENTED

1. Whether the Second Circuit Court of Appeals erred in upholding an award of attorney's fees against the petitioner under 42 U.S.C. Section 1983?

11

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CHAPTER IV

1871

The first of the year was a very dry one, and the crops were much injured. The weather was very hot, and the ground was very dry. The crops were much injured, and the people were very poor. The weather was very hot, and the ground was very dry. The crops were much injured, and the people were very poor.

The second of the year was a very wet one, and the crops were much injured. The weather was very cold, and the ground was very wet. The crops were much injured, and the people were very poor.

The third of the year was a very dry one, and the crops were much injured. The weather was very hot, and the ground was very dry. The crops were much injured, and the people were very poor.

The fourth of the year was a very wet one, and the crops were much injured. The weather was very cold, and the ground was very wet. The crops were much injured, and the people were very poor.

TABLE OF AUTHORITIES

CASES

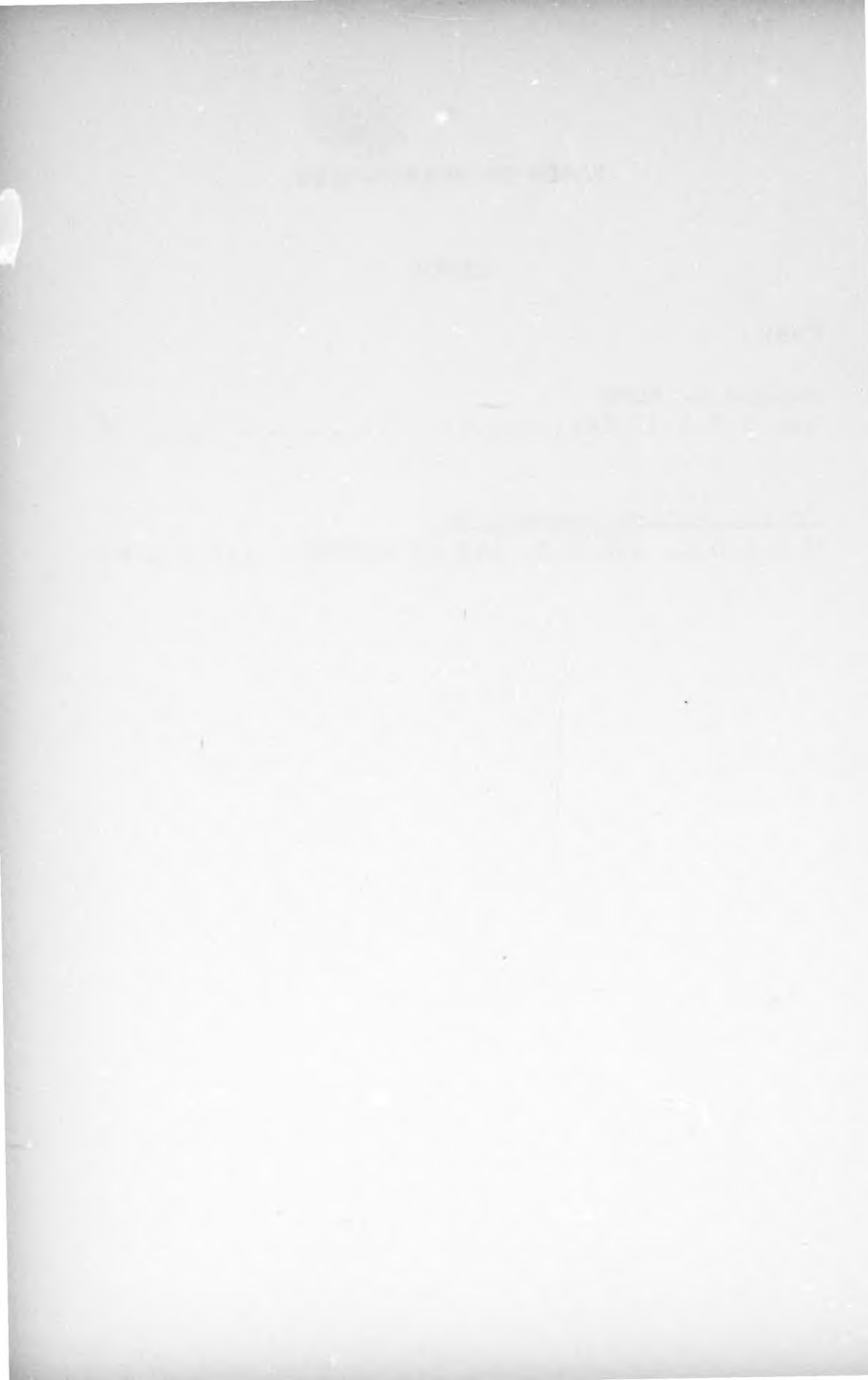
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Hughes v. Rowe

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Christianburg Garment Co.

U.E.E.O.C. 434 U.S. 412-22 (1978)..... 4



OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 89-9033 (2nd Circuit, 1990) and is reproduced herein as Appendix A. The subsequent decision of the Second Circuit denying the petition for a rehearing was on August 7, 1990 and is reproduced herein as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on June 4, 1990. A petition for rehearing was filed on August 1, 1990 and denied on August 7, 1990 by the same judges. This Court's jurisdiction is invoked pursuant to 28 U.S.C.

STATUTES AND REGULATIONS

The following statutory and regulatory provisions are set forth:

42 U.S.C. 1983 Civil Rights Act

BASIS OF FEDERAL JURISDICTION

The United State Court of Appeals for the Second Circuit had jurisdiction over this case by virtue of 42 U.S.C. 1983.

A. STATEMENT OF THE CASE

The cost of \$39,000.00 in attorney's fees arose from an adverse decision by the district judge who ruled that petitioner's case was frivolous even though the magistrates ruled that petitioner's case had merit. It was approved by the same district judge who ruled against petitioner. This case arises from an adverse, pretextual employment decision on the part of the Board of Police Commissioners of the City of Bridgeport permanently terminating the petitioner from his position as a Bridgeport policeman for the legally permissible purpose of depriving the petitioner of disability benefits to which, at the very least, the Board at the time believed the petitioner might well be entitled to under Connecticut's Heart and Hypertension Law. /1/

On appeal from the District Court, the Second Circuit Court of Appeals agreed with the District Court that petitioner's case was frivolous and had no merit. The three judges assigned to this appeal were the same judges assigned to hear petitioner's appeal for attorney's fees and the same judges were also assigned to hear petitioner's reconsideration for attorney's

fees and as expected, denied the claim.

/1/ Office of City Attorney, Thomas Jackson, 202 State Street, Bridgeport, Connecticut 06604. Telephone No. 203-576-7647.

B. STATEMENT OF FACTS

On July 21, 1989, the City of Bridgeport filed a motion for attorney's fees after the Second Circuit Court of Appeals rules against petitioner granting the City of Bridgeport a directed verdict in the 42 U.S.C. Section 1983 Action.

On August 16, 1989, Judge Daly issues a ruling saying that the petitioner's action was ab initio, groundless, unreasonable, and brought for vexatious purposes granting the City of Bridgeport \$39,000.00 in attorney's fees.

On August 30, 1989, a motion for reconsideration was filed by petitioner's attorney, Gary Mastronardi, 2112 North Avenue, Bridgeport, Connecticut 06604.

On October 17, 1989, the motion for reconsideration of respondent's attorney's fees was denied by the district judge.

On October 23, 1989, petitioner files a motion to the Second Circuit challenging the district judge's ruling on granting respondent attorney's fees of \$39,000.00.

On June 4, 1990, the same judges who heard petitioner's original claim on a directed verdict in favor of the respondent denied petitioner's claim on attorney's fees granted the respondent.

On August 7, 1990, the petition for a rehearing on attorney's fees granted to the respondent was denied by the same judges.

REASON FOR GRANTING WRIT

I.

A REVIEWING COURT SHOULD TAKE THE FACTS INTO CONSIDERATION. A GREAT INJUSTICE HAS BEEN DONE TO PETITIONER. AT LEAST IF SO ORDERED, THE SUPREME COURT SHOULD SEND THIS ACTION BACK TO THE SECOND CIRCUIT COURT OF APPEALS FOR AN HONEST AND FAIR REVIEW.

The district judge ruled that my case was ab initio, groundless, unreasonable, and brought for vexatious purposes. In Hughes v. Rowe, 449 U.S. 5 (1980), the Supreme Court assimilated into Section

1988 the standards for awarding attorney's fees to successful defendants. Under that standard, the successful defendants may recover Section 1988 fees only if "the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith," ID at 14. Obviously, under this standard, the fact that plaintiff may lose his case is not in itself a sufficient justification for the assessment of fees. Id. Accordingly, the Court cautioned district courts to resist the understandable temptation to engage in post hoc reasoning by concluding that because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. Christianburg Garment Co. U.E.E.O.C. 434 U.S. 412, 421-22 (1978)

The this action began in February, 1985. This case was litigated extensively and in good faith. District Judge Daly assigned Magistrate Egan to hear two separate motions in 1986. After those motions were heard by Magistrate Egan, they were adopted in toto by Judge Daly.

Later in 1987 and 1988, two separate rounds of defense motions to dismiss directed at the sufficiency

of plaintiff's pleadings and evidence was argued before Magistrate Joan Margolis. The Magistrate upheld the validity of the plaintiff's equal protection claim in both rounds of defense motions and were ultimately adopted and ratified by Judge Daly. How could Judge Daly on one hand say that the claims are valid and adopt them, and on the other hand, throw the case out of court, grant the respondent a directed verdict, and then grant the City of Bridgeport attorney's fees of \$39,000.00 after the Second Circuit Court of Appeals agrees with the district judge?

In the pre-trial motions, there were factual allegations that were upheld by the Magistrate and Judge Daly. These same factual allegations; 1) that my termination followed too closely on the heels of a medical examination that the petitioner suffered from heart disease; 2) that the petitioner's firing occurred just days before the Workmen's Compensation Commission could rule on the petitioner's eligibility for benefits; 3) that there was an awareness on the part of the commission that the petitioner's compensation hearing was imminent and that terminating the petitioner prior thereto might adversely affect the

petitioner's eligibility for benefits; 4) that the petitioner is the only police officer in the history of the Bridgeport Police Department ever to be permanently terminated for a minor rule violation; and 5) that there were several other officers who violated the same rule and were never terminated, were the same facts that the City of Bridgeport attempted to dismiss in pre-trial motions but were ultimately ratified by Judge Daly.

Yet, petitioner was ordered to pay attorney's fees of \$39,000.00 to respondent which was ordered by Judge Daly and upheld by the Second Circuit Court of Appeals using the same judges. How could that be?

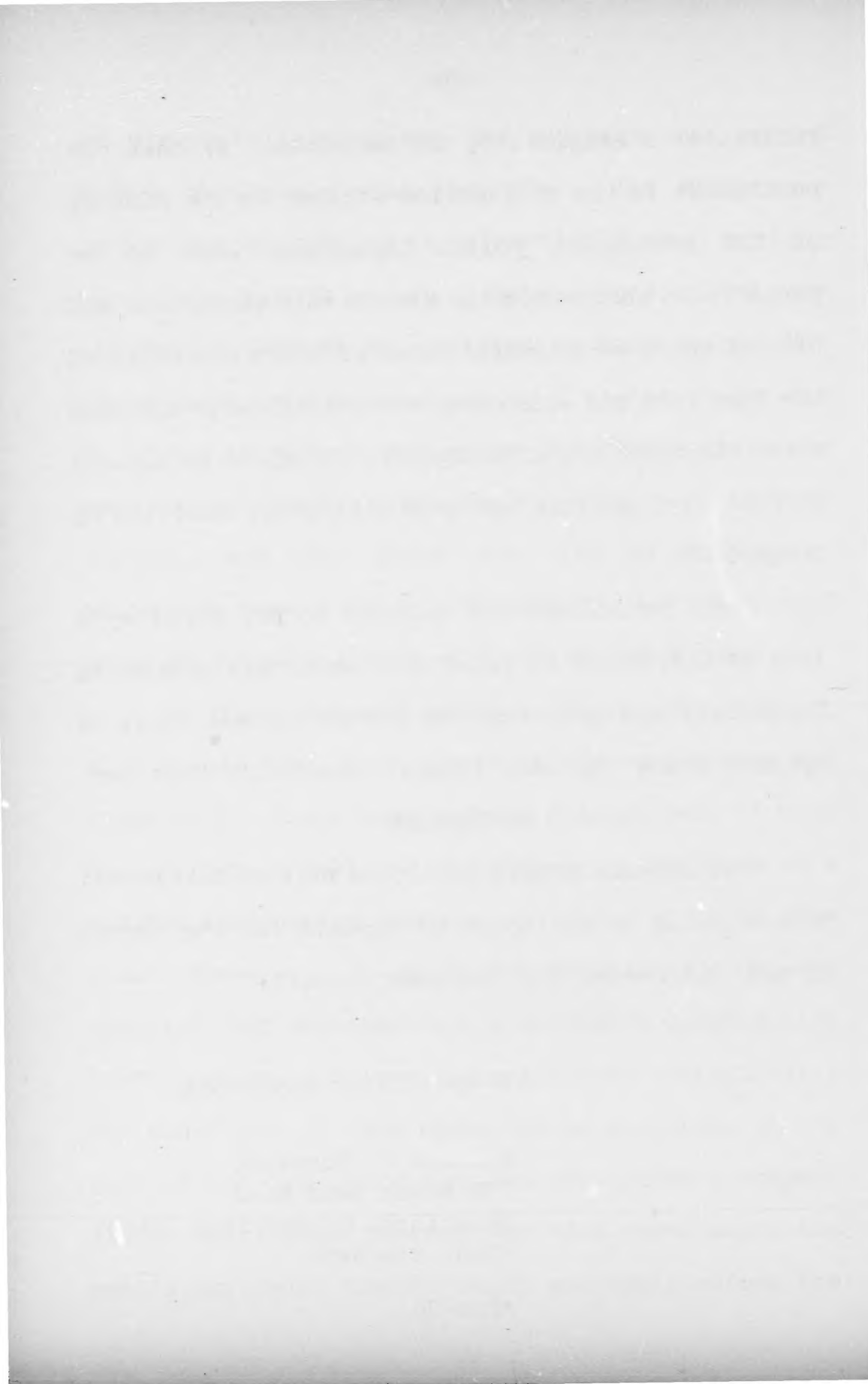
CONCLUSION

For reasons stated herein, a Writ of Certiorari should issue to the Court of Appeals for the Second Circuit to review its judgement herein.

Respectfully submitted,

Rudolph P. Kurowski
73D River Bend Road
Stratford, Connecticut 06497
(203) 378-6491

*Pro-Se



APPENDIX A

Decision of the United States Court of Appeals
for the Second Circuit on Attorney's Fees



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Daly
CONN

- - - - -

B 85- Civ.96

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourth day of June, one thousand nine hundred and ninety.

Present: HONORABLE IRVING R. KAUFMAN,

HONORABLE AMALYA L. KEARSE,

HONORABLE ROGER J. MINER,

Circuit Judges,

RUDOLPH P. KUROWSKI,

Plaintiff-Appellant

- v. -

No. 89-9033

CITY OF BRIDGEPORT, BRIDGEPORT POLICE COMMISSION,

Defendants-Appellees .

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by plaintiff pro se submitted by counsel for defendants.

ON CONSIDERATION WHEREOF, it is now hereby

ordered, adjudged, and decreed that the orders of said District Court be and they are hereby affirmed.

Plaintiff pro se Rudolph P. Kurowski appeals from orders of the United States District Court for the District of Connecticut, T.F. Gilroy Daly, Judge, (1) awarding attorney's fees to defendants in connection with their successful defense of his action alleging the termination of his employment and (2) denying Kurowski's motion for reconsideration of the award. Though we disagree with the district court's ruling that the motion for reconsideration was untimely, we affirm on the grounds that the award was within the discretion of the court and that Kurowski showed no basis for any modification.

The order of the district court was awarding defendants fees was filed on August 18, 1989. The court's Local Rule 9(e) (1) required that any motion for reconsideration be filed within 10 days. Kurowski filed his motion on August 31, 13 calendar days later. However, Fed. R. Civ. P. 6(a) provides that when the period of time prescribed by local court rules is less than 11 days, intermediate Saturdays and Sundays are to be excluded from the time computation. Excluding

those days in the present case, we note that Kurowski filed his motion within nine days. Thus, his motion for reconsideration was timely.

Nonetheless, we find no basis for reversing either the award of costs or the denial of reconsideration. It is within the discretion of the district court to award attorney's fees to a prevailing defendant in an action under 42 U.S.C. § 1983 or under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., if the court finds that the plaintiff's action was frivolous, unreasonable, groundless, or without foundation, or if the plaintiff continued to litigate after the action clearly became so. See Hughes v. Rowe, 449 U.S. 5, 15 (1980); Christianburg Garment Co. v. E.E.O.C., 434 U.S. 412, 421 (1978). After Kurowski's presentation of his case at trial, the district court directed a verdict against him, finding that no evidence had been presented that could reasonably support Kurowski's contention that his employment had been terminated for improper or discriminatory reasons. This Court affirmed, finding no error. In ruling on defendant's motion for fees, which Kurowski did not oppose, the court found that

Kurowski's claim

had been groundless, unreasonable, and brought for vexatious purposes. This finding, which is not inconsistent with the prior record, provided an adequate basis for the court's decision to award fees to defendants.

In denying Kurowski's motion for reconsideration, the district court stated, inter alia, that Kurowski had failed to specify what portion of the fee award he contended warranted reconsideration and did not show any justification for any reduction in the amount awarded. We find no error in these rulings and we accordingly affirm the denial of the motion for reconsideration.

We have considered all of Kurowski's arguments on this appeal and have found them to be without merit.

The orders of the district court are affirmed.

IRVING R. KAUFMAN, U.S.C.J.

**N.B. THIS SUMMARY ORDER
WILL NOT BE PUBLISHED IN THE
FEDERAL REPORTER AND SHOULD
NOT BE CITED OR OTHERWISE
RELIED UPON IN UNRELATED
CASES BEFORE THIS OR ANY
OTHER COURT.**

AMALYA L. KREASE, U.S.C.J.

ROGER J. MINER, U.S.C.J.

APPENDIX B

Decision of the United States Court of Appeals
for the Second Circuit on
a rehearing of Attorney's Fees



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of August, one thousand nine hundred and ninety.

Present: HONORABLE IRVING R. KAUFMAN,
HONORABLE AMALYA L. KEARSE,
HONORABLE ROGER J. MINER,
Circuit Judges,

RUDOLPH P. KUROWSKI,

Plaintiff-Appellant

- v. -

Docket No. 89-9033

CITY OF BRIDGEPORT and
BRIDGEPORT POLICE COMMISSION,

Defendants-Appellees .

A petition for rehearing having been filed herein by **appellant pro se RUDOLPH P. KUROWSKI**

Upon consideration by the panel that decided the appeal, it is Ordered that said petition be and it hereby is DENIED.

Elaine B. Goldsmith,
Clerk



APPENDIX C

Proceedings of the
United States District Court for Connecticut



CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.B-85-96
KUROWSKI, RUDOLPH P.v.	CITY OF EPT., & EPT POLICE COMM.	

DATE	NR.	PROCEEDINGS
2/22	1	COMPLAINT, filed, Summons issued.
	2	CIVIL Cover Sheet, filed.
	3	NOTICE of Req. for Prod., filed.
2/26	4	Appearance of Thomas K. Jackson, Esq., entered for defts.
2/27	5	Return of Service by Edwin S. Mak, Sheriff, showing dates of service on 02/ 22/85, on all defts.
3/14	6	Motion for An Ext. of Time, until April 3, 1985 to respond to the complaint, filed by defts.
3/22	7	Motion, # (6) endorsed: GRANTED. Pursuant to Local Rule 9(b) (1) (1). ROWE, C. copies to counsel.
4/1	7	Notice of compliance with Pltf's first Set of Requests for Production, filed by defts.
4/1	8	ANSWER, filed.

DATE	NR.	PROCEEDINGS
4/9	9	Motion to Strike, filed by pltf.
4/9	9a	Pltf's Memo. of Law In Supp. of Mot. to Strike, filed (attached to Motion)
4/18	10	Order of Reference to a United States Magistrate, Motion (#9), referred to Mag. Eagan. DALY, J. copies to counsel.
4/18	11	Deft's Memo Of Law In Opp, to Motion to Strike, filed.
4/18	12	Objection to Motion to Strike, filed by pltf.
4/19	13	Notice of service on interrogatories, filed by pltf.
4/19	14	Notice of Service of Request for Pro., filed by pltf.
4/19	15	Pltf's Motion For Leave to Propound Additional Interrog., filed.
5/8	16	MOTION for Ext. of Time until 6/17/85 to respond to Interrogs., filed by Defts.
5/21		Ext. of Time, # (16) endorsed: Pursuant to Local Rule 9(b) (i) (2) and (3), the motion is hereby GRANTED for a period not to exceed 20 days from the date of this

DATE	NR.	PROCEEDINGS
		order. ROWE, C. copies to counsel.
5/21	17	Pltf's Motion for Summary Judgment, filed.
5/21	18	Pltf's Memo. of Motion for Summary Judgment, filed.
5/21	19	Exhibits on Pltf's Motion for Summary Judgment, filed.
5/21	20	Statement of Material Facts, filed
5/31	21	Order of Reference, Motion # (17) referred to Mag. Eagan. DALY, J. copies to counsel.
6/3	22	OBJECTION to Pltf's Motion for Leave to propound Additional Interrogs., filed by Defts.
6/6	23	Motion for Ext. of Time, until June 21, 1985 to respond to pltf's Motion for Summary Judgment, filed by defts.
6/7		HEARING held before EAGAN, M. on Pending Motions (see Mts.)
6/10		Mo. (#15) endorsed: GRANTED, EAGAN, M. cc: attys.
6/10		Mo. (#9) endorsed: GRANTED by agreement.

DATE	NR.	PROCEEDINGS
		Deft. to amend special defense by July 8, 1985. EAGAN, M. cc:attys.
6/13		Mo. (#23) endorsed: GRANTED. EAGAN, M. cc:attys.
6/21	24	Objection to Pltf's Motion for S. J., filed by defts.
6/21	25	Statement of Disputed Facts, filed by defts.
6/21	25a	Deft's Exhibits in Opp. to the pltf's Motion for S. J., filed.
6/21	26	Memo. In Opp. to Pltf's. Motion for Summary Judgment, filed by defts.
6/27	27	Scheduling Order Pursuant to Rule 16, F.R.C.P., entered. DALY, J. Any mos. addressed to the pleadings to be filed by Aug. 30, 1985.
7/5	28	<u>AMENDMENT to Special Defense</u> , filed by City of Bpt & Bpt. Police Comm.
7/10	29	MOTION For Extension of Time Within Which To Respond To Pltf's First Set of Interrogatories, filed.
7/18		Mo. For Ext. (# 29) endorsed: GRANTED.

DATE	NR.	PROCEEDINGS
		EAGAN, M. cc: attys.
7/22	30	Pltf's Rebuttal Memo. In Support of Motion for Summary Judgment, filed.
6/26		STATUS CONF. CAL. before DALY, J.: HELD. Scheduling Order entered. Nov. Trial Cal.
8/29	31	Deft's Motion for Summary Judgment on Counts Three and Four of the Complaint, filed.
8/29	32	Statement of Material Facts of Which There is No Genuine Issue to be Tried On Counts Three and Four, filed.
8/29	33	Deft's Motion for Summary Judgment on Counts One, Two, Five and Six of the pltf's Complaint, filed.
8/29	34	Memo. in Support of Deft's Motion for Summary Judgment on Counts Three and Four of pltf's Complaint, filed.
8/29	35	Statement of material Facts of Which there is no Genuine issue to be tried on Counts One, Two, Five and Six, filed.
8/29	36	Memo. of law In Support of the Deft. Motion For Summary Judgment on Counts

DATE	NR.	PROCEEDINGS
		One, Two, Five and Six of the Pltf's Complaint, filed.
8/29	37	Exhibits in Support of Deft's Motion for Summary Judgment on Counts One, Two, Five and Six of the Pltf's Complaint, filed.
9/5	38	ORDER OF Reference to A United States Magistrate, Motion # (31 and 33) referred to Magistrate Eagan. DALY, J. copies to counsel.
9/6	39	Pltf's Memorandum of Law In Opposition To Deft's Motion For Summary Judgment, filed.
9/25		Per misc. Cal. held before EAGAN, J., ON Pltf's Mot. for S. J., on oral argument by agreement to be decided on the papers.
10/28	40	PLTF'S Motion to Compel Responses to Interrogatories, filed. TDGD fdp
11/5	41	ORDER OF REFERENCE TO U.S. MAGISTRATE F.O. Eagan., Document #40., Daly J., cc counsel of record.
11/12	42	Request for Leave To Amend Answer, filed by defts.

DATE	NR.	PROCEEDINGS
11/12	43	Notice of Compliance filed by defts.
12/11	44	Recommended Ruling on Cross Motions for Summary Judgment, filed and entered, pltf's motion for S. J. on counts three and four is DENIED. Defts' motion for summary judgment on counts three and four is DENIED. EAGAN, M. Copies to counsel.
12/19	45	Pltf's Objection To Magistrate's Ruling on Pltf's Motion for S. J., filed.
12/19		Request, #(42) endorsed: Absent objection, deft's request is hereby Granted. DALY, J. copies to counsel.
12/19	46	AMENDMENT TO Answer, filed.
<u>1986</u>		
1/2	47	DEFTS RESPONSE to Pltf's Objection to Mag's Ruling on Pltf's Mot. for S. J., filed. (mh)
1/6	48	Request For Leave To Amend Answer, filed.
1/6	49	Notice of Filing Amended Answers and Objections To Interrogatories, filed.
1/27		Magistrate's Ruling, #(44) endorsed: After review and over objection, the

DATE	NR.	PROCEEDINGS
		Magistrate's recommended ruling is hereby Adopted, approved and ratified. DALY, J. copies to counsel.
1/28	50	Notice of Compliance with Pltf's Second Set of Req. for Pro., filed by defts.
1/28		Pltf's Motion #(40) endorsed: Motion withdrawn by pltf. EAGAN, M. copies to counsel.
1/28	51	Notice of Filing Amended Answers to Interrog., filed by defts.
1/27		MISC. CAL. before EAGAN, Mag.: Mot. w/ drawn by Pltf. (mh)
2/3		Mo. (#48) endorsed: GRANTED. DALY, J. cc: attys.
2/3	52	AMENDMENT TO ANSWER, filed by defts.
2/5	53	Pltf's Motion For Reconsideration, filed, along with Memo. In Support of Motions.
2/10	54	Defts' Objection To Pltf's Motion For Reconsideration, filed.
2/14	55	Order of Reference, the Pltf's Motion for reconsideration is hereby referred to Magistrate Eagan. DALY, J. cc to counsel.

DATE	NR.	PROCEEDINGS
3/14	56	RECOMMENDED RULING ON PLTF'S MOTION FOR RECONSIDERATION, filed and entered, Pltf's motion for reconsideration is denied. EAGAN, M. copies to counsel.
3/27	57	NOT of Further Compliance With Pltf's Sec. Req. For Production, filed by defts.
3/31	58	Pltf's Objection To Mag's Ruling on Pltf's Mot For S. J., filed.
3/31	59	Pltf's Memo. of Law In Support of His Obj., etc., filed.
4/3	60	Deft's Response To Pltf's Objection to magistrate's Ruling on Pltf's Motion for Summary Judgment, filed.
4/3	61	Defts' A Memo. Of Law in Support of Their Response to Pltf's Objection to Mag's Ruling dated March 14, 1986, filed.
5/9	62	Notice of Change of Address of firm Linderman & Mastribardi, filed by pltf. (noted on front of docket sheet) (ct)
5/12		Magistrate's Ruling, # (56) endorsed: The Magistrate's recommended ruling is to be Adopted, Approved, and Ratified. Accord-

DATE	NR.	PROCEEDINGS
		ingly, pltf's motion for reconsideration is denied. DALY, J. copies to counsel.
7/10	63	Notice of deposition of Wallace B. Lebowitz, M.D., filed by pltf.
7/17	64	RETURN OF SERVICE of Depos. Subp., filed. Exec. 7/14/86. (mh)
<u>1987</u>		
2/23	65	Pltf's Motion for Leave file an Amended Complaint, filed (ct)
2/26		Pltf's Motion, #(65) end: GRANTED absent objection. DALY, J. copies to counsel (ct)
2/26	66	AMENDED COMPLAINT, filed. (ct)
6/23	67	Motion for Ext. of time, until July 10, 1987 within which to file their proposed findings of fact and conclusions, filed by defts. (ct)
6/24	68	Pltf's Motion for Leave to File A Second Amended Complaint, filed. (ct)
6/25		Motion for Ext. of Time, #(67) end: GRANTED on consent. DALY, J. copies so counsel (ct)

DATE	NR.	PROCEEDINGS
6/30	69	Objection to Motion to Amend Complaint, filed by defts (ct)
6/30	70	Motion for Ex. of Time, within which to file either proposed voir dire questions or, alternatively, proposed findings of fact and conclusions of law, filed by pltf. (ct)
7/6		Mot (#70) end.: GRANTED pending further order of the Court. DALY, J. cc: attys. cec
7/6	71	ANSWER To Pltf's Amended Complaint dated Feb. 17, 1987, filed. cec
7/6	72	Order of Reference to A United States Magistrate, Motion, #(68) referred to Mag. Smith. DALY, J. cc: to counsel. (ct)
7/7		Per Call of the Cal. & Jury Selection, held before DALY, J. Pending Motion OFF. (ct)
7/23	73	Pltf's Memo. in Support of Motion to Amend and for Jury Trial, filed. (ct)
7/27	74	Deft's Reply to Pltf's Memo. in Support of Motion and for Jury Trial, filed. (ct)

DATE	NR.	PROCEEDINGS
8/17		Pltf's Motion, #(68) end: Pltf's Motion should be Granted, the second amended complaint should be filed, and pltf. should be allowed a jury trial. SMITH, M. copies to counsel. (ct)
8/17	75	SECOND AMENDED COMPLAINT, filed, Jury Trial demand. (ct)
9/4		Pltf's Motion, #(68) end: After review and absent objection, the proposed ruling of the Magistrate is hereby Adopted, Approved and Ratified. DALY, J. copies to counsel (ct)
9/11	76	Motion to Dismiss, filed by defts. City of Bpt., et al
9/11	77	Memo. in Support of Motion to Dismiss, filed by defts. City of Bpt., et al
9/21	78	Pltf's Memo. of Law in Opp. to Defts' Motion to Dismiss, filed (ct)
9/30	79	Amendment To Motion to Dismiss, filed by defts. dw
9/30	80	Deft's Reply Memo in supp of mot to dismiss, filed by defts' dw

DATE	NR.	PROCEEDINGS
10/21	81	ORDER of Ref to U.S. Magistrate, re #76, ref. to Mag. Margolis, DALY, J. cc: attys dw
12/4		PER MISC. CA; . ORAL ARGUMENT heard before MARGOLIS, M. on Deft's Mot. To Dismiss Court opened 2:40PM; adj. 3:20PM. Deft's Ex. 1, filed. Pltf's obj overruled. Post-Argument briefs due 01/19/88; DEC. RESV. TAPE RECORDED (Smith, D.C.) cec.
12/7		Tape Recording of hrg. of 12/4/87, filed in N.H. Margolis, M.
<u>1988</u>		
1/12	82	Pltf's Supplemental Memo. of Law In Opposition to defts' Motion to Dismiss, filed (ct)
1/15	83	DEFT'S Post Argument Memo in Supp of Defts' Mot to Dismiss, filed by defts dw
2/19	84	RECOMMENDED Ruling on Defts' Mot to Dismiss, Treated as A Motion For Summary Judgment, filed. The Court declines to give the arbitration awards of the Board either claim or issue preclusion effect

DATE	NR.	PROCEEDINGS
3/14		and on such basis, defts' mot to dismiss accordingly is denied. The Court declines to consider whether the allegations of pltf's complaint are sufficient to state a claim under Sec. 1983 until those issues are more fully developed. MARGOLIS, M., cc: attys (See Ruling for details (dw) RULING #(84) end: After review & absent obj, the proposed ruling of the Mag. is hereby ADOPTED, APPROVED and RATIFIED. Should the defts wish to renew the mot to dismiss referred to in Sec. B of this ruling, it shall be filed no later than April 1, 1988. DALY, J., cc: attys dw, M-3/11/88
3/31	85	MOT For Ext of Time (until April 8, 1988) within which to file the mot to dismiss due April 1, 1988, file by defts (dw)
4/4		MOT #(85) end: GRANTED on consent. DALY, J., cc: attys (dw)
4/6	86	MOT To Dismiss, filed by defts (dw)

DATE	NR.	PROCEEDINGS
4/6	87	MEMO In Supp of #86, filed by defts (dw)
4/20	88	MOT For Ext of (until May 20, 1988) within which to file a memo of law in oppos of defts' mot to dismiss, filed by pltf (dw)
4/21		MOT #(88) end: GRANTED in part such that a response shall be filed, if at all, no later than May 6, 1988. DALY, J., cc: attys (dw)
5/9	89	PLTF'S Memo of Law In Oppos to Defts' Mot to Dismiss, filed by pltf (dw)
5/11	90	ORDER of Reference to A U.S. Magistrate, filed & ent. (re#86) referred to Mag. Margolis, DALY, J., cc: attys (dw)
5/19	91	DEFTS' Reply Memo In Supp of Mot to Dismiss, filed by defts (dw)
6/23	92	TAPE Recording of Oral Argument on Defts' Motion To Dismiss, before MARGOLIS, M. (in N.H.) dw
7/08	93	RECOMMENDED RULING on Defts' Mot To Dismiss, filed, Deft's mot is granted with respect to Ct. 1 unless pltf files an amended complaint w/i 20 days of Chief

DATE	NR.	PROCEEDING1
		Judge Daly's action hereon, such mot is denied with respect to Ct. 2 and granted with respect to Cts. 3 & 5. MARGOLIS, M. cc: attys
7/18	94	PLTF'S Partial Obj to Magistrate's Recommended Ruling dated July 7, 1988, filed (dw)
7/20	95	OBJ To Magistrate's Recommended Ruling on Deft's Mot to Dismiss, filed defts (dw)
7/20	96	MEMO in Support of #95, filed by dfts (dw)
7/25	97	DEFTS' Reply to Pltf's Partial Obj to Magistrate's Recommended Ruling dated July 7, 1988, filed (dw)
8/8		RECOMMENDED RULING on Defts' Mot to Dismiss, re #93, end: Construing the factual allegations of the present complaint in the light most favorable to the pltf, no such claim is possible. Therefore the Court does not on the present record grant leave to amend the complaint to include a substantive due process claim. In all other respects, after

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		careful review and over obj, the Magistrate's ruling is hereby AFFIRMED, ADOPTED and RATIFIED. Accordingly, the motion to dismiss is GRANTED with respect to Counts One, Three and Five and DENIED with respect to Count Two. Count Four has been withdrawn by the pltf. Pltf. shall file an amended complaint consistent with this ruling no later than twenty days hereof. DALY, J., cc: attys, & Mag. Margolis, M-8/8/88 (dw) (See Ruling for details)
8/17	98	MOTION For Leave to Amend Complaint, filed by pltf (dw)
8/24	99	OBJECTION To Pltf's Third Amended Complaint, filed by defts (dw)
8/24	100	MEMO In Obj to Pltf's Third Amended Complaint, filed by defts (dw)
8/30		MOAT # (98) end: In light of the liberal provision of Fed. AR. Civ. P. 15 permitting the amendment of pleadings, the motion to amend is GRANTED. Defts may raise their

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		objs to the amended complaint in the form of a motion to dismiss. DALY, J., cc: attys (dw)
8/30	101	THIRD AMENDED COMPLAINT, filed (dw)
9/1	102	PLTF's Memo of Law In Oppos to Defts' Obj to Pltf's Amended Complaint, filed (dw)
9/9	104	MEMO In Supp of #(103), filed by defts (dw)
9/15	105	PLTF'S Memo of Law In Oppos to Defts, Mot to Dismiss, filed (dw)
10/7		Motion to Dismiss, #(103) end: Accordingly, the motion to dismiss is hereby granted. DALY, J. copies to counsel (ct)
10/28	106	JUDGMENT, filed. It is therefore ORDERED and ADJUDGED that judgment be and is hereby entered for the defts and the action is dismissed. ROWE,C., cc: attys M-10/31/88 (dw)
11/4	107	MOT to re-open and amend the judgment entered on October 27, 1988, filed by pltf (dw)
11/8		MOT #(107) end: Pltf. is correct in noting that defts' mot to dismiss filed Sept. 9.

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		1988 was directed only at Count Two of the Third Amended Complaint and that the Court's Ruling on the mot to dismiss thereby only dismissed Count Two. Accordingly, the mot to reopen is GRANTED and the judgment of October 28, 1988 is VACATED. Pltf. shall file an amended complaint comporting with the Court's ruling on the defts' mot to dismiss within ten days hereof. SO ORDERED. DALY, J., cc: attys (dw)
11/15	108	PRETRIAL ORDER, filed & entered: Case to appear on Court's January 1989 Ready Trial List; Pretrial Conf no later than Dec 5, 1988, each party to exchange Trial Memo by Dec. 5, 1988. DALY, J., cc: attys (dw)
11/16	109	MOT For Leave to Amend Complaint, filed (dw)
11/17	110	ANSWER TO FOURTH AMENDED COMPLAINT, filed (dw)
11/18		MOT #(109)end: GRANTED, DALY, J., cc: attys (dw)
11/18	111	FOURTH AMENDED COMPLAINT, filed (dw)
12/5	112	DEFT's Trial Memorandum, filed (dw)

DATE	NR.	PROCEEDINGS
12/6 <u>1989</u>	113	PLTF's Trial Memorandum, filed (dw)
1/31	114	NOTICE of Proposed Voir Dire Questions, filed by pltf. (dw)
2/7	115	PLTF's Mot in Limine, filed. (dw)
2/7	116	NOT of Proposed Jury Instructions, filed by pltf. (dw)
2/7	117	DEFTS' Motion In Limine, filed. (dw)
2/7	118	OBJ to Pltf's Mot In Limine, filed by defts. (dw)
2/7		CALL of the Cal before TFGD; Ready-Trial 2/13/89 at 10:00 (dw)
2/7		JURY TRIAL COMMENCES: 60 Jurors at roll call; 13 jurors excused for cause; Basic panel of 16 names drawn; jury of 6 & 2 alts. impanelled, but not sworn; testimony to commence 2/13/89. Court adj.; TFGD (dw)
2/10	119	MOT to File Supp Jury Instructions, filed by defts. (dw)
2/13		JURY TRIAL CONTINUES: Jury of 6 & 2 alts; pltf's exhs 1-80 marked for Id; deft's exhs 501-510, marked for Id; Pltfs. mot

DATE	NR.	PROCEEDINGS
		to preclude Arbit - Dec-denied; pltfs mot to Preclude Arbi. Award - denied; pltfs mot to Preclude test. re pltfs emp. - denied; Oral argument on defts mot in limine - DEC RES: Ct rules on mots re: disability/pension ques & evid of Bad Faith of Commissioners. pltfs mot to sequester wtns - granted; pltfs exhs 3, 4, 42, 11, 14, 19, 27, 40, 41, 75A-C, 80, made full exhs; deft exh. 501, made full; pltf resumes stand for cont'd test. & cross exam; pltfs exh 62a made full; defts exhs 506, 509, 505 & 507 made full. Ct adj.; WWE (dw)
2/14		MOT (No. 115)end: For the reasons stated on the record in open court, DENIED; TFGD; cc: counsel (dw)
2/14		MOT (No. 117)end: For the reasons stated on the record in open court, DENIED: TFGD; cc: counsel (dw)
2/14		MOT (No. 119)end: GRANTED, TFGD; cc: counsel (dw)

DATE	NR.	PROCEEDINGS
2/14		JURY TRIAL CONTINUES: Jury of 6 & 2 alts; defts exh 511, marked for ID; 3 pltf withn sworn & test.; pltf exhs 81, 82, 83, 84 marked for ID; pltf exh 55 made full; oral argument re: exhs not admitted; defts mot to strike part of Walsh test. - DEC. RES.; defts exh 512 marked for ID & made full' defts mot to strike part of test of wtn G. Kelly - DEC. RES.; defts mot to dismiss and/or Directed Verdict - DEC. RES.; Ct adj until 2/15/89; TFGD (dw)
2/15		JURY TRIAL CONTINUED: Jury of 6 & 2 alts; Ruling on Defts Mot for Directed Verdict GRANTED; Complaint Dismissed. Ct Adj. TFGD. (dw)
2/15	120	JUDGMENT, filed. It is therefore ORDERED and ADJUDGED that jmt be and is hereby entered in favor of the defts & the pltfs complaint is dismissed. ROWE, C.; cc: counsel w/NOA, info, M-2/26/89 (dw)
2/23	121	NOTICE of Appeal, filed by pltf. from jdmt entered 2/15/89. Copies of Notice mailed

DATE	NR.	PROCEEDINGS
		to counsel of record. *ct) Civil Appeal package mailed. FEE PAID
2/23		CERT. copy of docket sheet and Notice of Appeal, mailed to Clerk, USCA. (ct)
3/15		Civil Appeal scheduling Order #1 rec'd fro, USCA record due 4/3/89 (ct)
3/29	122	Transcripts of proceedings held on 2/13/89, 2/14/89 volume 1&2, and 2/15/89, filed (Ct)
4/4		ROA, forwarded to Clerk, USCA and copies of Index mailed to counsel of record.
4/19		Acknowledgment rec'd from Clerk, USCA, ROA rec'd on 4/06/89 (ct)
4/25		Supp. to ROA, forwarded to Clerk, USCA and copies of Index mailed to counsel of record. (ct)
5/5		Acknowledgment rec'd from Clerk, USCA, Supp. to ROA, rec'd on 4/27/89 (ct)
7/17	123	ATTESTED COPY OF MANDATE, rec'd from Clerk, USCA, filed and entered, Accordingly the judgment of the district court is affirmed. KAUFMAN, MINER and POLLACK,

DATE	NR.	PROCEEDINGS
		J'S GOLDSMITH, C. copy to TFGD (ct)
7/17	124	ITEMIZED AND VERIFIED BILL OF COSTS, rec'd from Clerk, USCA, filed and entered. Costs are hereby taxed in the amount of \$356.50 in favor of appellees, City of Bpt. GOLDSMITH, C.
7/21	125	Application for Award of Attorney's Fees and Costs. filed by defts. (ct)
7/25		Record on Appeal returned from U.S. Court of Appeals and Acknowledgment of receipt forwarded to Clerk on 7/25/89 (ct)
8/18		APPLIC (No. 125)end: Accordingly, defts' applic for attys' fees & costs is hereby GRANTED in full absent timely obj and for god cause shown. TFGD; cc: counsel
8/31	126	PLTr'S Mot for Reconsideration, filed. (dw)
9/6	127	RESPONSE to Pltf's Mot for Reconsideration, filed by defts. (dw)
10/18		MOT #126 end: Pltf's mot for reconsideration is DENIED because it is untimely, <u>see</u> L.R. 9(e) (1), it fails to set forth

DATE	NR.	PROCEEDINGS
		adequate reasons for pltf's failure to respond to the orig applic for fees, it fails to specify with particularity which portions of the fee award are worthy of reconsideration, and it does not furnish justification for any reduction in the award previously made. Accordingly, the Court adheres to its Ruling of Aug. 18, 1989. Defts applic for atty's fees in connection with opposing this mot is DENIED in view of the size of the award previously ordered by the Court. TFGD; cc: counsel. dw
10/23	128	Appearance of Rudolph P. Kurowski, pro se, entered on behalf of himself, filed. (cw)
10/23	129	Notice of appeal, filed by pro se pltf. copies mailed to counsel. (cw) FEE PAID
10/23		Civil Appeal package, handed to pro se pltf. (cw)
10/24		Cert. copy of docket sheet and Notice of

DATE	NR.	PROCEEDINGS
11/27		Appeal, forwarded to Clerk, USCA (cw) Civil Appeal Scheduling Order, rec'd from Clerk, USCA RECORD DUE, Dec. 11, 1989\
12/6		ROA, forwarded to Clerk, USCA and copies of Index mailed to counsel of record (cw)
12/18		Ack. of ROA, rec'd from Clerk, USCA, rec'd by P. Valentine. (cw)

